

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y., et al)
)
Plaintiffs)
)
v.) CIVIL ACTION NO. 3:04cv251 TSL-FKB
)
PHIL BRYANT, as Governor of the State of Mississippi, et al.)
)
Defendants)

**DEFENDANTS' RESPONSE AND OBJECTION TO
PLAINTIFFS' MOTION FOR ATTORNEYS' FEE AND EXPENSES**

Defendants respond and object to Plaintiffs' Motion for Attorneys' Fees and Expenses ("Plaintiffs' Motion") as follows:¹

1. Plaintiffs' Motion was filed on October 30, 2019, along with their Memorandum of Law, seeking approval of the parties' agreement regarding Plaintiffs' attorneys' fees in the amount of \$103,274.18. Plaintiffs' Motion also seeks an order requiring Defendants to remit payment of the agreed upon amount within thirty (30) days of entry of the requested order.

2. Defendants have agreed to the amount of fees to be paid (\$103,274.18) but object to Plaintiffs' request for an order that the fees be paid within thirty (30) days.

3. Defendants have never shown an unwillingness or reluctance to pay the agreed upon amount of fees. Instead, throughout the entire history of this litigation, Defendants have acted in a cooperative fashion in the payment of the Plaintiffs' attorneys' fees – totaling more than \$15 million. As demonstrated below, Plaintiffs' attorneys' fees have consistently been paid

¹ Due to the nature of this pleading, Defendants request relief from the requirement of filing a memorandum brief in support of Defendants' response.

through deficit appropriations requested by, and made available to, the Attorney General's office:

2008 SB 3051, Lines 234-240;
2009 HB 1702, Lines 98-103;
2011 SB 3085, Lines 65-70;
2012 HB 1511, Lines 116-127;
2013 SB 2904, Lines 46-57;
2014 HB 1440, Lines 53-66;
2015 SB 2837, Lines 209-222;
2016 SB 2924, Lines 78-85;
2017 SB 3015, Lines 46-53;
2018 HB 1617, Lines 82-86;
2019 HB 1667, Lines 89-92.

See Legislative Appropriation Bills 2008-2019, attached hereto collectively as Exhibit "A".

4. Plaintiffs are aware that the Attorney General's Office will be seeking to pay Plaintiffs' counsel through a deficit appropriation in the next legislative session. In fact, Plaintiffs were aware such would be the case when the parties agreed upon the amount of fees to be paid.

5. Defendants' and the Attorney General's position on paying Plaintiffs' attorney fees through legislative appropriation is in accordance with Mississippi law, which states that a "judgment or decree against the State shall not be satisfied except by an appropriation therefor by the legislature, and an execution shall not be issued against the State." *See* Miss. Code Ann. § 11-45-5.

6. In fact, Plaintiffs have recognized numerous times in the past the use of the deficit appropriation mechanism for payment of Plaintiffs' attorneys' fees. *See* ECF No. 633 (Plaintiffs' Unopposed Motion requesting approval of fees to "be paid upon appropriation by the Mississippi legislature . . ."); ECF No. 596 (Plaintiffs' Unopposed Motion requesting payment "upon appropriation by the Mississippi legislature . . ."); and ECF No. 581 (Plaintiffs'

Unopposed Motion requesting payment “upon appropriation by the Mississippi legislature”). Likewise, the Court has recognized the use of the deficit appropriation mechanism for payment of Plaintiffs’ attorneys’ fees. *See* ECF No. 635 (Order granting fees with payment “upon appropriation by the Mississippi legislature”); ECF No. 598 (Order granting fees with payment “upon appropriation by the Mississippi legislature”); and ECF No. 583 (Order granting fees “upon appropriation by the Mississippi legislature”).

WHEREFORE, Defendants request that the Court deny Plaintiffs’ Motion insofar as it seeks payment of the agreed upon fees within thirty (30) days. Defendants further request the Court’s order approving the agreed upon attorneys’ fees direct that payment shall be made by Defendants to Plaintiffs’ Counsel in the agreed-upon amount of \$103,274.18, upon appropriation by the Mississippi legislature.

RESPECTFULLY SUBMITTED, this the 13th day of November, 2019.

PHIL BRYANT, as Governor of the State of Mississippi, JESS H. DICKINSON, as Commissioner, Mississippi Department of Child Protection Services, and TRACY MALONE, as Deputy Commissioner of Child Welfare, Mississippi Department of Child Protection Services

By: /s/ William C. Pentecost

OF COUNSEL:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
James L. Jones (MSB #3214)
William C. Pentecost (MSB #99841)
One Eastover Center
100 Vision Drive, Suite 400
Jackson, MS 39211
Telephone: (601) 351-2400
Facsimile: (601) 351-2424

Harold E. Pizzetta, III
Assistant Attorney General
Office of the Mississippi Attorney General
P.O. Box 220
Jackson, MS 39205